

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the Purpose of Revising Certain Rules of Practice and Procedure to Implement Public Utilities Code Section 1708.5 (Petitions for Rulemaking).

Rulemaking 02-06-040
(Filed June 27, 2002)

**DECISION VACATING DECISION 04-01-020
AND CLOSING DOCKET****Summary**

This decision vacates Decision (D.) 04-01-020, which was adopted prematurely, and closes this proceeding based on the final approval of Rule 14.7,¹ as amended by D.03-08-071, by the State Office of Administrative Law (OAL).

Background

On June 27, 2002, the Commission adopted an Order Instituting Rulemaking (OIR), which proposed the adoption of new Rule 14.7 regarding petitions to amend, adopt, or repeal a regulation (Petitions) in order to implement Section 1708.5,² to be included in a new Article 3.5 regarding rulemaking in general. Rule 14.7 responds to the requirement of Section 1708.5 that the Commission amend its Rules to provide specific procedures for handling such Petitions. After publishing the requisite Notice of Regulatory Action in the

¹ All Rule citations are to the Commission Rules of Practice and Procedure (Rules), unless otherwise stated.

² All Code references are to the Public Utilities Code, unless otherwise stated.

California Regulatory Notice Bulletin on July 12, 2002, and receiving and responding to public comments on the proposed Rule, we adopted D.03-03-020, which added new Article 3.5 and Rule 14.7 to the Rules, on March 13, 2003. We subsequently forwarded Article 3.5 and Rule 14.7 to OAL for approval pursuant to the Administrative Procedures Act (APA).³ On June 5, 2003, we approved D.03-06-025, which closed this proceeding.

We subsequently withdrew our filing of new Article 3.5 and Rule 14.7 with OAL in order to consider further amendments to Rule 14.7. On August 21, 2003, we approved D.03-08-071, which reopened this proceeding and amended Rule 14.7, to permit the filing of Petitions regarding our procedural Rules. We then forwarded Rule 14.7, as amended to OAL for approval pursuant to the APA.⁴

On January 8, 2004, we inadvertently adopted D.04-01-020, which closed this proceeding, prematurely, because OAL had not yet approved Rule 14.7 as amended by D.03-08-071. OAL approval of Rule 14.7 based on certain criteria is required by the APA.

On January 14, 2004, OAL approved Rule 14.7, as amended by D.03-08-071.

Discussion

The sole purpose of this proceeding was to consider the adoption of Rule 14.7 in order to implement Section 1708.5.

Since we inadvertently adopted D.04-01-020, which closed this docket, before OAL had given final approval of Rule 14.7, and since that decision did not reference the date of OAL's action, D.04-01-020 should be vacated, and this

³ Govt. Code Section 11340 *et seq.*

⁴ *Id.*

docket should be re-opened so that we can adopt this decision, which properly reflects the date of OAL's approval of Rule 14.7.

The Commission has found no need to further consider Rule 14.7 since our approval of D.03-08-071 on August 2003, and OAL has now approved Rule 14.7. Consequently, there is no need to keep this proceeding open after this decision is approved.

If the Commission wishes to consider additional amendments to Rule 14.7 or additions to Article 3.5 in the future, it may do so in a separate docket.

Waiver of Review and Comment

Since the Commission has provided for public review and comment on this rulemaking pursuant to the Administrative Procedure Act (Gov't Code Section 11340 *et. seq.*) the otherwise applicable 30-day period for public review and comment is waived pursuant to Rule 77.7(f)(8).

Assignment of Proceeding

Loretta M. Lynch is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On June 27, 2002, the Commission adopted an OIR, which proposed the addition to the Rules of both new Rule 14.7 regarding petitions to adopt, amend or repeal a regulation in order to implement Section 1708.5 and a new Article 3.5 regarding rulemaking in general.

2. On March 13, 2003, after allowing for public review and comment pursuant to APA requirements, the Commission adopted D.03-03-020, which approved the addition of a new Article 3.5 and a new Rule 14.7 to the Rules and closed this proceeding.

3. On August 21, 2003, we approved D.03-08-071, which reopened this proceeding and amended Rule 14.7 to permit Petitions related to Commission procedural Rules.

4. On January 8, 2004, we inadvertently adopted D.04-01-020 prematurely, before OAL had approved Rule 14.7 as amended by D.03-08-071.

5. On January 14, 2004, OAL approved Rule 14.7 as amended by D.03-08-071, as required by the APA.

6. This decision should be issued to properly reflect OAL's actual approval of Rule 14.7, and the date thereof.

7. Since the adoption of new Article 3.5 and Rule 14.7 was the only issue to be addressed in this proceeding, there is no need for this docket to remain open.

8. If the Commission wishes to consider further additions to Article 3.5 or amendments to Rule 14.7 in the future, it may do so in a separate docket.

Conclusions of Law

1. D.04-01-020 should be vacated because we inadvertently closed this docket before OAL had approved Rule 14.7 as required by state law.

2. This docket should be re-opened for the purposes of considering this order.

3. This decision should be issued to properly reflect OAL's actual approval of Rule 14.7, and the date thereof.

4. Since there are no remaining issues to be considered by the Commission in this docket, it is unnecessary for this proceeding to remain open.

O R D E R

IT IS ORDERED that:

1. Decision 04-01-020 is vacated because it was adopted prematurely, and is now replaced by this decision.
2. Rulemaking 02-06-040 is now closed.

This order is effective today.

Dated _____, at San Francisco, California.